

## § 1091.106

## 12 CFR Ch. X (1–1–14 Edition)

based on the Notice, authorize the Associate Director, without further notice to the respondent, to issue a proposed decision and order as provided in § 1091.108(c)(1) and the Director to issue a decision and order as provided in § 1091.109(a)(1).

(d) *Waiver.* A respondent shall be deemed to have waived the right, at any future stage of an Associate Director's or the Director's consideration of a matter, and in any petition for judicial review of an order issued pursuant to § 1091.109(a)(1), to rely on any argument, record, document, or other information that the respondent does not raise or include in its response.

(e) *No Discovery.* There shall be no discovery in connection with a response.

### § 1091.106 Supplemental oral response.

(a) A respondent may request in a response under § 1091.105 the opportunity to present to the Associate Director a supplemental oral response in support of a respondent's assertion that the respondent is not a nonbank covered person that is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services.

(b) The conduct of a supplemental oral response shall be subject to the following procedures:

(1) A supplemental oral response shall be, at the respondent's preference, by telephone or in person at the Bureau's headquarters in Washington, DC. If a respondent requests in its written response a supplemental oral response but does not specify whether such response shall be conducted via telephone or in person, the supplemental oral response will be conducted by telephone unless otherwise directed by the Associate Director;

(2) The Associate Director may impose any limitations on the conduct of a supplemental oral response, including but not limited to establishing a time limit for the presentation of a supplemental oral response, and limiting the subjects to be addressed in a supplemental oral response;

(3) There shall be no discovery permitted or witnesses called in connection with a supplemental oral response;

(4) If a respondent is a corporate or other entity, and not a natural person, the respondent shall be represented in any supplemental oral response by:

(i) An officer, managing or general member, or partner authorized to represent the respondent; or

(ii) An attorney in good standing of the bar of the highest court of any State.

(5) If a respondent is a natural person, the respondent shall be represented in any supplemental oral response by:

(i) Himself or herself; or

(ii) An attorney in good standing of the bar of the highest court of any State.

(6) The Associate Director shall cause an audio recording of a supplemental oral response to be made by a court reporter. A respondent may purchase a copy or transcript of the recording at the respondent's own expense.

(c) The initiating official may participate in any supplemental oral response conducted under this section.

(d) The Associate Director shall serve on a respondent, within 14 days after the Associate Director receives the respondent's timely-filed response requesting a supplemental oral response, a notice setting forth the date, time, and general information relating to the conduct of a supplemental oral response. The date of a supplemental oral response shall be scheduled not less than ten days after the date the respondent is served with the notice of supplemental oral response.

(e) The notice of supplemental oral response shall be served on a respondent pursuant to § 1091.107.

(f) The Associate Director shall send a copy of the notice of supplemental oral response to the initiating official.

(g) A respondent's failure to participate in a supplemental oral response scheduled by the Associate Director shall constitute the respondent's waiver of the opportunity to present a supplemental oral response.

### § 1091.107 Manner of filing and serving papers.

Unless otherwise specified by the Associate Director or Director, a respondent shall file the response and any

other paper with the Executive Secretary at the mailing or electronic address provided by the Bureau, and the Associate Director and Director shall serve any paper, other than a Notice as set forth in § 1091.104, on a respondent, by:

(a) Electronic transmission upon any condition specified by the Associate Director or Director; or

(b) Any of the following methods if a respondent demonstrates electronic filing is not practicable and the Associate Director or Director permits:

(1) Personal delivery;

(2) Delivery through a reliable commercial courier service or overnight delivery service; or

(3) Mailing the papers by U.S. Postal Service First Class, Registered, Certified, or Express Mail.

**§ 1091.108 Recommended determination.**

(a) If a respondent did not voluntarily consent to the Bureau's supervisory authority, and did not request the opportunity to present a supplemental oral response, not later than 45 days after receipt of a timely-filed response, or not later than 45 days after the service of a Notice of Reasonable Cause when a respondent fails to file a timely response, the Associate Director shall make a recommended determination whether there is reasonable cause for the Bureau to determine that the respondent is a nonbank covered person that is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services which should result in an order subjecting the respondent to the Bureau's authority under 12 U.S.C. 5514(a)(1)(C).

(b) If a respondent did request the opportunity to present a supplemental oral response, not later than 90 days after service of a Notice of Reasonable Cause, the Associate Director shall make a recommended determination whether there is reasonable cause for the Bureau to determine that the respondent is a nonbank covered person that is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or serv-

ices which should result in an order subjecting the respondent to the Bureau's authority under 12 U.S.C. 5514(a)(1)(C).

(c) Upon making the recommended determination described in paragraphs (a) or (b) of this section, the Associate Director shall submit to the Director either:

(1) A proposed decision and order that would subject a respondent to the Bureau's supervisory authority pursuant to 12 U.S.C. 5514(a)(1)(C) if adopted by the Director; or

(2) A proposed notification that a respondent should not be subjected to the Bureau's supervisory authority under 12 U.S.C. 5514(a)(1)(C) based on the proceedings. Such a notification shall have no precedential effect and shall not prevent the issuance of another Notice of Reasonable Cause pursuant to either § 1091.102, or the procedures set forth in § 1091.111, at any time, or from issuance of a decision and order based on another Notice recommending that a respondent be subject to the Bureau's authority pursuant to either of those sections.

(d) Any proposed decision and order issued by the Associate Director pursuant to paragraph (c)(1) of this section shall set forth:

(1) A statement that the Associate Director has preliminarily determined based on reasonable cause that a respondent is a nonbank covered person that is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services;

(2) The basis for the Associate Director's determination; and

(3) A proposed order directing that, pursuant to this determination, as of a specified date a respondent shall be subject to the Bureau's supervisory authority under 12 U.S.C. 5514.

(e) The Associate Director shall include with the recommended determination submitted to the Director copies of the following:

(1) The Notice of Reasonable Cause;

(2) The record of service of a Notice of Reasonable Cause;

(3) A respondent's response and any documents, records, or other items filed with the written response;